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- 1) Appeal Brief with Appendix-15 pages
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Inventor(s): Schmitt
S.N.: 09/242,014
Filed: April 5, 1999
Case: CM1189Q

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/242,014
Applicant(s) : Achim Schmitt
Filed : 04/05/1999
Title : Disposable Absorbent Article With Wings Predisposed
Towards Their In-Use-Position
TC/A.U. : 3761
Examiner : Anderson
Conf. No. : 9441
Docket No. : CM1189Q
Customer No. : 27752

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir,

This is an appeal of Claim 1, currently pending in the above identified application, that was finally rejected in an Office Action dated September 27, 2005. A timely Notice of Appeal was filed on Oct. 12, 2005.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

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Customer No. 27752

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RELATED APPEALS AND INTERFERENCES

There is a related prior appeal on the instant application, Appeal No. 2005-1242. A copy of the decision is attached in the Related Proceedings Appendix.

STATUS OF CLAIMS

Claim 1 is rejected.

Claim 1 is being appealed.

A complete copy of the appealed claim 1 is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The Appellants' present invention relates to a disposable absorbent article (20) for wearing in an undergarment. (See page 3, lines 30-32). The disposable absorbent article (20) comprises a longitudinal axis, a transverse axis, and a main body portion that has longitudinal side edges substantially extending parallel to the longitudinal axis and has transverse side edges substantially extending parallel to the transverse axis. (See page 3, line 32 – page 4, line 3). The main body portion further includes a wearer facing surface and a garment facing surface. (See page 4, lines 4-6). The disposable absorbent article comprises side wrapping elements that are integral with the main body portion. (See page 14, lines 27-29 and Fig. 3). The side wrapping elements are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. (See page 15, line 20 – page 17, line 13 and Fig. 3).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of Claim 1 under 35 U.S.C. 102(b) over U.S. Patent No. 5,201,727 (Nakanishi et al.).

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ARGUMENTS

Rejection of Claim 1 under 35 U.S.C. 102(b) over U.S. Patent No. 5,201,727 (Nakanishi et al.).

Nakanishi et al. discloses an absorbent article have integral side wrapping elements extending from the main body portion. The side wrapping elements are folded along fold lines and attached to the garment facing side of the main body portion.

Claim 1 of applicants invention is directed to a disposable absorbent article comprising side wrapping elements that are folded along fold lines and attached to the garment facing side of the main body portion. The side wrapping elements are attached in such a way so as to be pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

According to the Office Action Figures 1a and 1b are said to depict the absorbent article of Nakanishi et al. in an in-use-position prior to use. This is incorrect. A careful reading of Nakanishi et al. reveals that the attachment of the side wrapping elements to the main body portion as depicted in Figures 1a and 1b is not an attachment that creates a structure which is pre-positioned in an in-use-position prior to use. Figures 1a and 1b show the absorbent article of Nakanishi et al. in a position for delivery or in a packaging position. That is, the absorbent article is not in an in-use-position.

The side wrapping elements of Nakanishi et al. are not attached to the garment facing side of the main body portion in such a way so as to be pre-positioned in an in-use-position prior to the use of the disposable absorbent article. In fact, the opposite is true. According to col. 5, lines 44-64, the side wrapping elements are attached to the main body portion such that they must be manipulated numerous times to be in an in-use-position. First, side wrapping elements of Nakanishi et al. are separated from the main body and folded outwardly. This folded outwardly position is shown in Figure 2 of Nakanishi et al. The main body of the Nakanishi et al. absorbent article is then affixed to the undergarment with adhesive portions 7. The side wrapping elements of Nakanishi et al. are then bent inwardly to wrap the edges of the undergarment. The adhesive portion 6 then affixes the side wrapping elements of Nakanishi et al. to the undergarment.

Thus, it is clear that the attachment of the side wrapping elements to the main body portion as depicted in Figures 1a and 1b of Nakanishi et al. is not an attachment that creates a

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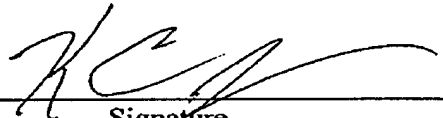
structure which is pre-positioned in an in-use-position prior to use. Therefore, Nakanishi et al. does not anticipate Claim 1 as it fails to disclose each and every element of Claim 1.

SUMMARY

In view of all of the above, it is respectfully submitted that Claim 1 is not anticipated by Nakanishi et al. (U.S. Patent No. 5,201,727). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejection, and remand with directions to allow Claim 1 of the present application.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Kevin C. Johnson

Typed or printed name

Registration No. 35,558

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Date: October 19, 2005

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CLAIMS APPENDIX

1. (Previously Presented) Disposable absorbent article (20) for wear in an undergarment, comprising: a longitudinal axis (L) and a transverse axis (T), said disposable absorbent article comprising a main body portion (21) having longitudinal side edges (23) substantially extending parallel to said longitudinal axis (L) and having transverse side edges (22) substantially extending parallel to said transverse axis (T), said main body portion (21) further having a wearer facing surface and a garment facing surface, and said disposable absorbent article comprising side wrapping elements that are integral with said main body portion (21) said wrapping elements being folded along fold lines and attached to said garment facing side of said main body portion such that said side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

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EVIDENCE APPENDIX

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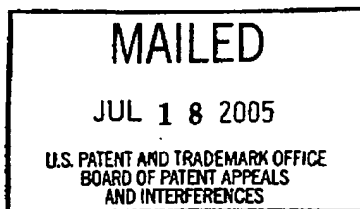
RELATED PROCEEDINGS APPENDIX

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The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

OCT 19 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCESEx parte ACHIM SCHMITTAppeal No. 2005-1242
Application No. 09/242,014

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed May 14, 2003) of claims 1 and 6 to 9. Claims 2 to 5 and 10 were canceled prior to the final rejection. On page 2, of the brief (filed July 3, 2003), the appellants state "[c]laims 6-9 are cancelled. Claim 1 is being appealed." Accordingly, the appeal with respect to claims 6 to 9 is dismissed. Claim 1 remains on appeal.

We REVERSE.

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BACKGROUND

The appellant's invention relates to disposable absorbent articles such as sanitary napkins, pantliners and incontinence pads that have side wrapping elements, also called wings on each longitudinal side edge of the article for protection of the side edges of the wearer's undergarment. The side wrapping elements are joined to the absorbent article such that they are predisposed towards their in-use-position, with the outermost edge of the side wrapping elements towards the longitudinal center line of the article. In this configuration the side wrapping elements can be unfolded by pulling the outermost edge of each side wrapping element in a transverse direction and applying the unfolded article to the crotch position of the wearers undergarment (specification, p. 1). Claim 1 reads as follows:

Disposable absorbent article (20) for wear in an undergarment, comprising: a longitudinal axis (L) and a transverse axis (T), said disposable absorbent article comprising a main body portion (21) having longitudinal side edges (23) substantially extending parallel to said longitudinal axis (L) and having transverse side edges (22) substantially extending parallel to said transverse axis (T), said main body portion (21) further having a wearer facing surface and a garment facing surface, and said disposable absorbent article comprising side wrapping elements that are integral with said main body portion (21) said wrapping elements being folded along fold lines and attached to said garment facing side of said main body portion such that said side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

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Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,454,804¹ to Widlund.

The conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection are set forth in the answer (mailed September 23, 2003) and the brief (filed July 3, 2003).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claim 1, to the Widlund patent, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we will not sustain the anticipation rejection of claim 1 for the reasons which follow.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between

¹ Issued October 3, 1995.

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the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

In the rejection before us in this appeal, the examiner (answer, p. 3) determined that claim 1 was readable on Widlund as follows:

Widlund discloses a sanitary napkin, as shown in figure[s] 1-6, for wearing the crotch portion of an undergarment (9). The sanitary napkin has a longitudinal axis and a transverse axis, and comprises a main body portion having longitudinal and transverse side edges, as shown in figures 1 and 5. The main body portion comprises a wearer facing surface (1) and a garment facing surface (2). The sanitary napkin comprises side wrapping elements (4, 5) that are integrally connected to the main body portion. The side wrapping elements (4, 5) are intended to be folded around the edges of the leg opening's of a wearer's undergarment (9), and are therefore folded along fold lines, as shown in figure 6. The side wrapping elements (4, 5) are attached to the garment facing surface (2) of the main body portion such that the side wrapping elements (4, 5) are predisposed in an in-use position prior to use, as shown in figure 3.

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The appellant states in the brief that claim 1 is directed only to the Figure 3 embodiment of the invention in which side wrapping elements integral with the main body portion are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. The appellant asserts that claim 1 is not readable on the Figure 4 embodiment of the invention in which separate side wrapping elements are attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. The appellant argues that Widlund teaches separate flaps attached to the garment facing side of the main body portion akin to his Figure 4 embodiment, not the claimed Figure 3 embodiment.

Claim 1 is not anticipated by Widlund. Claim 1 requires the disposable absorbent article to include side wrapping elements integral with the main body portion are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. While Widlund's flaps may well be considered to be "integral" with the main body portion as argued by the examiner (answer, p. 4), Widlund's flaps are not integral with the main body portion and folded

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along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

For the reasons set forth above claim 1 is not anticipated by Widlund. Accordingly, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is reversed.

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